

Via Facsimile: (703) 872-9326

9D-DW-19324-CIP
PATENT

The rejection of Claims 6-10 and 16-18 under 35 U.S.C. § 102(b) as being anticipated by Rop (U.S. Patent No. 2,948,560) is respectfully traversed.

Rop describes a latch mechanism for a household refrigerator. A keeper (11) is rigidly secured to a refrigerator cabinet for engagement and disengagement of a pivotally mounted latch bolt (14). The latch bolt includes a keeper engaging roller (16), a base portion (17), and a resiliently flexible portion (18) extending therebetween. The latch bolt base portion includes a slot (19) that receives a pin (24) of a handle (20). The handle rotates about a pivot pin (21), and as the handle is rotated, movement of the pivot pin in slot of the latch bolt base portion causes the flexible portion of the latch bolt to rotate and engage or disengage the keeper engaging roller from the rigid keeper mounted to the refrigerator cabinet. Rop col. 3, lines 19 to col. 4, line 35.

Claim 6 recites a door latch assembly for a dishwasher, the latch assembly includes "a door comprising a door retainer projection ... a latch handle pivotally mounted to said door ... and a latch actuator pivotally mounted to said door, said latch handle pivoting in one direction, said latch actuator pivoting in another direction, said handle selectively positionable between an open position and a closed position to couple said door to the appliance via said door retainer projection."

Rop does not describe nor suggest a door latch assembly for a dishwasher, wherein the latch assembly includes a door including a door retainer projection, a latch handle pivotally mounted to the door, and a latch actuator pivotally mounted to the door, the latch handle pivoting in one direction, the latch actuator pivoting in another direction, and wherein the handle is selectively positionable between an open position and a closed position to couple the door to the appliance via the door retainer projection. Specifically, Rop does not describe nor suggest a door including a door retainer projection. For at least the reasons set forth above, Applicants respectfully submit that Claim 6 is patentable over Rop.

Claims 5-10 depend from independent Claim 6. When the recitations of Claims 5-10 are considered in combination with the recitations of Claim 6, Applicants submit that dependent Claims 5-10 likewise are patentable over Rop.

Claim 16 recites a door assembly for a dishwasher, said door assembly comprising "an escutcheon ... a latch handle pivotally mounted to said escutcheon about a first longitudinal axis

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... and a latch actuator pivotally mounted to said escutcheon about a second longitudinal axis; said latch handle contacting said latch actuator when rotated about said first longitudinal axis in a first direction and causing said latch actuator to rotate about said second longitudinal axis in a second direction opposite said first direction."

Rop does not describe nor suggest a door assembly for a dishwasher, the door assembly that includes an escutcheon, a latch handle pivotally mounted to the escutcheon about a first longitudinal axis, and a latch actuator pivotally mounted to the escutcheon about a second longitudinal axis, wherein the latch handle contacting the latch actuator when rotated about the first longitudinal axis in a first direction and causing the latch actuator to rotate about the second longitudinal axis in a second direction opposite the first direction. Specifically, Rop does not describe nor suggest a door assembly that includes an escutcheon including a latch handle pivotally mounted to the escutcheon about a first longitudinal axis, and a latch actuator pivotally mounted to the escutcheon about a second longitudinal axis. For at least the reasons set forth above, Applicants respectfully submit that Claim 16 is patentable over Rop.

Claims 17 and 18 depend from independent Claim 16. When the recitations of Claims 17 and 18 are considered in combination with the recitations of Claim 16, Applicants submit that dependent Claims 17 and 18 likewise are patentable over Rop.

For the reasons set forth above, Applicants respectfully request that the Section 102 rejection of Claims 6-10 and 16-18 be withdrawn.

The rejection of Claims 1-19 under 35 U.S.C. § 103 as being unpatentable over Rop (U.S. Patent No. 2,948,560) in view of Marks et al. ("Marks") (U.S. Patent No. 4,776,620) is respectfully traversed.

Rob is described above. Marks describes a door latching mechanism (30) for a dishwasher door (16). The inside of door has a frame (32) fixedly secured to the door for supporting a switch (34) and a bolt (36). The frame (32) defines an upwardly opening pocket (38) which closely and fixedly accepts the switch that is activated by depressing an actuator button (46) downward. The bolt has an enlarged head (48) extending upwardly from an elongate leg (50) on the frame which resides closely, guidingly against an edge (58) on the actuator button. A strike plate (60) is carried in cantilever fashion by a frame element and projects

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forwardly of a front edge of a tub (29). The strike plate has a forward latching portion (68) which engages the bolt. When the door is closed, the bolt projects through a rectangular cut-out (110) on the strike plate and allows latching, at the same time, a corner (108) of the strike plate bears directly on the actuator button so as to activate the same. Marks col. 2, line 32 to col. 3, line 48.

Applicants respectfully submit that the Section 103 rejection of the presently pending claims is not a proper rejection. Obviousness cannot be established by merely suggesting that it would have been obvious to one of ordinary skill in the art to modify Rop according to the teachings of Marks. More specifically, it is respectfully submitted that a prima facie case of obviousness has not been established. As explained by the Federal Circuit, "to establish obviousness based on a combination of the elements disclosed in the prior art, there must be some motivation, suggestion or teaching of the desirability of making the specific combination that was made by the applicant." In re Kotzab, 54 USPQ2d 1308, 1316 (Fed. Cir. 2000). MPEP 2143.01.

Moreover, the Federal Circuit has determined that:

[I]t is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious. This court has previously stated that "[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention."

In re Fitch, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992). Further, under Section 103, "it is impermissible . . . to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art." In re Wesslau, 147 USPQ 391, 393 (CCPA 1965). Rather, there must be some suggestion, outside of Applicants' disclosure, in the prior art to combine such references, and a reasonable expectation of success must be both found in the prior art, and not based on Applicants' disclosure. In re Vaeck, 20 U.S.P.Q.2d 1436 (Fed. Cir. 1991). In the present case, neither a suggestion nor motivation to combine the cited art, nor any reasonable expectation of success has been shown.

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Although it is asserted within the Office Action that Rop teaches the present invention except for disclosing the keeper is resilient, and that Marks discloses a resilient keeper, no motivation nor suggestion to combine the cited art has been shown. Since there is no teaching nor suggestion in the cited art for the claimed combination, the Section 103 rejection appears to be based on a hindsight reconstruction in which isolated disclosures have been picked and chosen in an attempt to deprecate the present invention. Of course, such a combination is impermissible, and for this reason alone, Applicants request that the Section 103 rejection of Claims 1-5 be withdrawn.

Furthermore, Applicants respectfully submit that no motivation for the combination can be found within Rop and Marks, as Rop and Marks teach away from each other. Rop describes a rigid keeper mounted to a cabinet and interacting with a flexible bolt of the latch mechanism, but Rop does not describe nor suggest a resilient keeper that is engaged to the door retainer projection in the door. In contrast, Marks describes a resilient keeper and a rigid actuator.

If art "teaches away" from a claimed invention, such a teaching supports the nonobviousness of the invention. U.S. v. Adams, 148 USPQ 479 (1966); Gillette Co. v. S.C. Johnson & Son, Inc., 16 USPQ2d 1923, 1927 (Fed. Cir. 1990). In light of this standard, it is respectfully submitted that the cited art, as a whole, is not suggestive of the presently claimed invention. More specifically, Applicants respectfully submit that Marks teaches away from Stanley, and as such, there is no suggestion or motivation to combine Rop with Marks.

Further, and to the extent understood, no combination of Rop and Marks, describes or suggests the claimed combination, and as such, the presently pending claims are patentably distinguishable from the cited combination. Specifically, Claim 1 recites a latch assembly for a door including a door retainer projection, wherein the latch assembly includes "a handle pivotally mounted to the door for rotation about a first end ... a latch actuator contacting said handle and mounted to the door for rotation about a second end, said handle rotating in a first direction when actuated and said latch actuator rotating in a second direction opposite the first direction ... and a resilient keeper engaged to the door retainer projection in a closed position, said latch actuator configured to disengage said keeper from the door retainer projection when said handle is actuated."

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Neither Rop nor Marks, considered alone or in combination, describe or suggest a latch assembly for a door including a door retainer projection, wherein the latch assembly includes a handle pivotally mounted to the door for rotation about a first end, a latch actuator contacting the handle and mounted to the door for rotation about a second end, the handle rotates in a first direction when actuated and the latch actuator rotates in a second direction opposite the first direction, and a resilient keeper is engaged to the door retainer projection in a closed position, and wherein the latch actuator is configured to disengage the keeper from the door retainer projection when the handle is actuated. Rather, Rop and Marks appear to teach away from the present invention and each other. More specifically, Rop describes a rigid keeper mounted to a cabinet and interacting with a flexible bolt of the latch mechanism, but Rop does not describe nor suggest a resilient keeper that is engaged to the door retainer projection in the door. Marks describes a resilient keeper and a rigid actuator. For at least the reasons set forth above, Applicants respectfully submit that Claim 1 is patentable over Rop in view of Marks.

Furthermore, Applicants respectfully disagree with the assertion within the Office Action that the recitation of "for a door including a door retaining projection" is considered an intended use, and does not introduce any structure into the Claim. Specifically, the Federal Circuit has stated that a term appearing in the preamble is a "necessary limitation" where the term "breathes life and meaning into the claims". Loctite Corp. v. Ultraseal Ltd., 781 F.2d 861, 866 (Fed. Cir. 1985). In addition, language in the preamble further limits the claim if such language is "necessary to give meaning to the claim[s] and properly define the invention." Perkin Elmer Corp. v. Computervision Corp., 732 F.2d 888, 896 (Fed. Cir. 1984). For example, a preamble may be necessary to give meaning to the claims, and thus limit the scope of the claims, when "patentability depends on limitations stated in the preamble". C.R. Bard, Inc. v. M3 Sys., Inc., 157 F.3d 1340, 1350 (Fed. Cir. 1998). Here, the recitation of "for a door including a door retaining projection" within the preamble clearly gives meaning to the claims, and thus limits the scope of the claims. Additionally, the recitation of "for rotation about a first end" and "for rotation about a second end" within the body of the claims clearly gives meaning to the claims, and thus limits the scope of the claims. Accordingly, for at least the reasons set forth above, Claim 1 is submitted to be patentable over Rop.

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Claims 2-5 depend from independent Claim 1. When the recitations of Claims 2-5 are considered in combination with the recitations of Claim 1, Applicants submit that dependent Claims 2-5 likewise are patentable over Rop in view of Marks.

In view of the foregoing amendments and remarks, all the claims now active in this application are believed to be in condition for allowance. Reconsideration and favorable action is respectfully solicited.

Respectfully Submitted,



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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Gregory Owen Miller, et al. :
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For: METHODS AND APPARATUS :
FOR SECURING A :
DISHWASHER DOOR :

SUBMISSION OF MARKED UP CLAIMS

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P.O. Box 1450
Alexandria, VA 22313-1450

Submitted herewith are marked up claims in accordance with 37 C.F.R. Section 1.211(c)(1)(ii), wherein additions are underlined and deletions are [bracketed].

IN THE CLAIMS

1. (three times amended) A latch assembly for a door including a door retainer projection, said latch assembly comprising:

a handle pivotally mounted to the door for rotation about a first end;

a latch actuator [contacting]rotationally coupled to said handle and [mounted]pivotally coupled to the door for rotation about a second end, said handle rotating in a first direction when actuated and said latch actuator rotating in a second direction opposite the first direction; and

a resilient keeper engaged to the door retainer projection in a closed position, said latch actuator configured to disengage said keeper from the door retainer projection when said handle is actuated.

6. (twice amended) A door latch assembly for [an appliance]a dishwasher comprising:

a door comprising a door retainer projection;

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a latch handle pivotally mounted to said door; and

a latch actuator pivotally mounted to said door, said latch handle pivoting in one direction, said latch actuator pivoting in another direction, said handle selectively positionable between an open position and a closed position to couple said door to the appliance via said door retainer projection.

7. (twice amended) A door latch assembly in accordance with Claim 6 wherein the [appliance is a] dishwasher [including] further includes a tub assembly, said latch assembly further comprising a keeper attached to the door assembly for engaging said door retainer projection

16. (three times amended) A door assembly for a dishwasher, said door assembly comprising:

an escutcheon comprising a latch portion;

a latch handle pivotally mounted to said escutcheon about a first longitudinal axis; and

a latch actuator pivotally mounted to said escutcheon about a second longitudinal axis, said latch handle contacting said latch actuator when rotated about said first longitudinal axis in a first direction and causing said latch actuator to rotate about said second longitudinal axis in a second direction opposite said first direction.

17. (once amended) A door assembly in accordance with Claim 16, [said escutcheon including a latch portion,] said latch handle comprising a closed handle stop portion contacting said latch portion in a closed position.

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